

## ***International Legal Framework for Combating Piracy Through the Use of Force: An Overview of the Pathology of Private Military Security Companies' Role***

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### **Abstract**

**Background and Theoretical Foundations:** By the end of the 20th century, the international community had managed to develop a relatively cohesive legal system for fighting against piracy and had taken commendable actions against pirates. Recent cases have been greatly efficient in inhibiting the activities of pirates. However, the situation has changed since the beginning of the 21st century, in which there has been an extremely rising trend in statistics for the theft of merchant ships. In other words, the activities of pirates have now become the most important challenge to the security of international trade and merchant ships at sea worldwide.

**Methodology:** This research employs a descriptive-analytical method, in some cases, combined with a prescriptive-mandatory approach, to examine the international legal framework for combating piracy through the use of force, with an emphasis on the role of private military security companies.

**Findings:** It is necessary to comply with the principles of necessity and proportionality, as well as all provisions of international humanitarian law, when fighting against pirates. However, it is preferable to resort to force

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against pirates to resolve the piracy problem. Although we believe that eradicating the challenge of piracy seems to be an Idealistic and utopian idea, we are sure that by adopting a coherent plan, this major international challenge can be curbed. Even without weapons, merchantmen can defend themselves well, and reducing the motivation of pirates will definitely have an effect on reducing piracy.

**Conclusion:** According to the research results, states are obliged to comply with all principles and regulations of international humanitarian law for the use of force against pirates. The results also identified two challenges to the roles of private military security companies in this regard. Finally, five solutions such as holding scientific workshops and providing theoretical and practical training to sailors, reviewing recorded videos of pirates' actions, using the experiences of ship Captain who have been able to neutralize pirates' operations, preparing suitable scenarios for how to manage the crisis, and ultimately the possibility the use of simulated workshops and placing the vessel in a position that is going to be attacked by pirates can improve the readiness of sailors and ship captains to deal with piracy to enhance the security of merchant ships against piracy operations.

**Keywords:** International Law, Pirates, Private Military-Security Company, Merchant ships

## **1. Introduction**

The increase in the amount of commercial exchanges by sea led to problems such as how to secure cargo vessels against pirate attacks, and considering that maritime trade played an important role in meeting the most basic needs of countries and strengthening international relations between them, the international community decided to In addition to fixing the flaws and inadequacies of the legal system governing the seas, a suitable mechanism to fight against pirates should be achieved (Sogancilar, 2021: 38). In 1982, the majority of governments were able to establish a relatively coherent legal system governing the seas through the adoption of the Convention on the Law of the Seas 1982, and by relying on the 7 articles that were dedicated to piracy in the aforementioned convention, they



concentrated their actions in order to reduce the amount of pirate activity. However, upon entering the 21st century, the situation changed and the theft of cargo vessels increased sharply (Fuchs and Jamal, 2020: 17). The recent incident provided the ground for the role of private military-security companies (P.M.S.C) in the fight against pirates. However, despite the participation of the private sector in securing the seas, many international forums such as the United Nations Security Council declared that piracy is still the biggest challenge for security and trade in the seas (Baghban and Naderpoor, 2021:91).

The main question of the current research is that the fight against pirates through the use of force is subject to what regulations and in this regard, what are the challenges for the role-playing of private military-security companies? Also, what solutions can be used to improve the security of cargo vessels against theft operations? Our hypothesis is that governments and private military-security companies cannot abandon the application of the most basic principles governing the use of force in international humanitarian law in the fight against pirates. We are also of the opinion that perhaps the role of private military-security companies is a more cost-effective option than the use of government-military forces, but it will definitely come with challenges. On the other hand, we believe that a number of solutions can play an important role in improving the security of cargo vessels against theft operations. Since resorting to force is considered a very useful tool in the fight against pirates and today some countries have resorted to hiring private military-security companies to protect their cargo vessels against pirates, and also due to the lack of coherent research on the provision Solutions to improve the security of cargo vessels against theft operations, we considered it necessary to provide a research with this title. With the aim of finding a complete answer to the above question and validating their hypothesis, the authors used the descriptive-analytical method and in some cases the prescriptive-mandatory method. In this research, first, a short history of the course of the crime of piracy becoming the biggest challenge for security and trade in the seas and the beginning of the role of private military-security companies in the fight against piracy is stated. In the second part, we defined the crime of piracy in the framework of international law and described the theoretical foundations governing the use of force against pirates by a government, and we identified and raised two challenges for the role of private

military-security companies in the fight against pirates. Finally, in the third part, the authors carefully analyzed a number of pirate operations and paid attention to the common tactics among them, and presented five solutions to improve the security of cargo vessels against theft operations, which do not require advanced technology and high financial support for their implementation. In the conclusion section, a coherent program is proposed to curb the crime of piracy.

## **2. Background**

The cooperation and coordination behind the scenes of England, France, Denmark and the Netherlands with pirates turned the 16th century into the golden age of their activity, but Gentili, a famous Italian jurist, openly criticized the nature of the actions of pirates and their supporters on the one hand and extinguished many fires. From the wars among European countries, on the other hand, in the 17th century, European statesmen started fighting pirates in addition to cutting ties with their countries. In 1698, for the first time in the world, England passed the "Law of Combating Pirates". After some time, other European countries realized that the effective fight against pirates requires the cooperation and coordination of all of them. Although at the end of the 17th century and the beginning of the 18th century, there was a favorable consensus among countries regarding the need to fight against pirates, but wide theoretical differences regarding the way to fight against pirates were considered a big obstacle for making a single decision (Mousavi and et.al. 2011: 369). The first cooperation and coordination of the international community regarding the fight against theft and piracy was manifested in the Treaty of Paris 1856. This treaty, which for the first time in the world abolished mercenary ships and created an independent legal personality for pirates, emphasized that pirates should be arrested and tried. Following the ratification of this treaty, many jurists, influenced by the teachings of William Blaxton 1595-1675, a famous English jurist of the 18th century, started legal theorizing about the fight against theft and pirates.

In 1926, the Committee of Jurists of the League of Nations prepared a draft consisting of 8 articles entitled "Regulations for Combating Pirates" and subsequently requested the Harvard Law School to examine the legal aspects of



this draft. In 1932, the Harvard Law School announced the result of its investigation in the form of the "Harvard Plan" as follows: "This draft does not seem to be able to establish a balance between the attitude of international law and the domestic law of countries towards the fight against piracy and piracy." (Taghizadeh, 2013: 38). This draft was never approved, but in 1949, the International Law Commission tried to fix its inadequacies and pay attention to the legal teachings of the Harvard Plan, to prepare a new plan that includes the issue of combating piracy and other rights-related issues cover the seas as well. The above-mentioned plan was approved during a conference in 1958 under the name of the High Seas Convention, which in turn and according to the requirements of the date of its approval, was able to gather and direct the will of the governments in order to draw the rules applicable to the seas and fight against theft and piracy. Following the request of a number of governments that did not participate in the 1958 conference, the United Nations General Assembly held the Third Conference on the Law of the Sea in 1973. During 9 years and during 11 meetings, this conference finally succeeded in approving a document known as the Convention on the Law of the Seas signed by 168 countries in 1982 (Kraska, 2018: 181). In this convention, which is also known as the constitution of the seas, 7 articles were dedicated to theft and piracy. Due to the fairly appropriate legal positions adopted regarding the fight against theft and piracy, maritime trade has become one of the main arteries of providing the most basic needs of countries, vessels have become bigger and the value of their cargo has increased, patrolling of the seas and especially international waters has begun. In this way, the activity of pirates decreased on a very large level until the end of the 20th century, but the situation changed upon entering the 21st century (Nwalozie, 2020: 160).

In 2004, the International Maritime Organization (I.M.O)<sup>1</sup> announced that 370 cases of piracy were recorded in 2001, 445 in 2002, and 325 in 2003, most of which occurred in the Strait of Malacca. The military patrols of the governments of Singapore, Indonesia and Malaysia reduced piracy in this region, but the activity of pirates in other parts of the world increased (Arianti and Others, 2020: 6). In 2006, the Security Council, through Resolution 1676, 10 May 2006, expressed concern about the expansion of pirate activities. In October 2008, Somali pirates stole the Ukrainian ship MV Faina, which was carrying 30 Russian T-72 tanks and

more than 2 tons of light military weapons, creating an atmosphere of security around the world. About 40 days later, while the world was still stunned by the theft of the Faina vessel, it was reported that Somali pirates also stole the Saudi MV Sirius Star vessel, which was carrying 2 million barrels of oil. I.M.O reported in its 2009 report that 406 cases of piracy were registered, a large number of which occurred in the waters of East Africa, the Gulf of Aden, the Red Sea, and incidentally, by Somali pirates. In this report, it was announced that Somali pirates attacked 120 vessels, took 867 hostages and stole 47 vessels. On the sidelines of this report, I.M.O expressed concern about the increase in the number of thefts, the initiative in carrying out operations, the desire to use violence and the choice of large targets by pirates, especially Somali pirates. These cases increased the presence of the military on the coast of Somalia, and the Security Council prescribed military patrols in the territorial waters of this country based on Resolution 1851, 16 December 2008 . The recent measures have been somewhat effective as the 2010 I.M.O report shows that the number of recorded piracy cases in East African waters and the Gulf of Aden has decreased from 222 to 172 cases compared to 2009, but the number of piracy cases in the Caribbean Sea has increased. It had increased from 27 to 77 cases and in the Arabian Sea from 2 to 16 cases. Unfortunately, I.M.O statistics from 2011 show that pirates are not even afraid to kill their hostages (Taghizadeh, 2013: 63-64).

Recording cases of failure of the military in direct confrontation with pirates, as well as the exorbitant costs of patrolling in areas far from the coast, made some countries pave the way for private military-security companies to play a role in the fight against pirates. In 2006, the private American military-security company Black Water expanded its scope of activity to the seas by concluding contracts to secure cargo vessels carrying the flag of the United States of America, and by entering the Gulf of Aden, it became the first private military-security company in the world, which also provided its services in the field of seas, but it should be noted that Germany and Malta are the first countries that, in December 2012 and August 2013, respectively, have consistent laws clarifying the activities of these companies in securing cargo vessels, the way of issuing licenses They approved activities for these companies as well as monitoring their actions. The role of



private military-security companies in the security of cargo vessels has an effect on reducing the costs of securing the cargo vessels of a few countries, more than it can reduce the number of pirates. The continuation of the international community's concern about the continued activity of pirates is proof of the above claim. For example, until 2020, the Security Council issued more than 30 resolutions focusing on pirates and considered their activity as the biggest threat to security and trade in the seas (Baghban and Naderpoor, 2021:85).

## **2. Conceptual Framework and Theoretical Foundations**

For a better understanding of future discussions, this section is dedicated to the definition of piracy and the theoretical foundations governing the use of force against pirates, and we address the role-playing challenges of private military-security companies in the fight against piracy and pirates.

### **2.1. Conceptual Framework**

Article 101 of the Convention on the Law of the Seas is considered a legal element of the crime of piracy. This regulation defines piracy as follows: "Illegal and violent actions by the members of a private vessel that ultimately end in the capture, detention, looting, or loss of the persons present or property in another vessel; Provided that these acts are carried out within the limits of international waters and based on personal goals. The latter definition consists of indicators that can be used to better understand the concept of piracy.

First, the existence of at least two vessels is necessary for the crime of piracy (Taghizadeh, 2013: 43). To put it better, in the crime of piracy, we always see the attack of one vessel in the role of attacker to another vessel in the role of victim. It is necessary that the attacking vessel has a private description. The meaning of a private vessel is a vessel that is autonomous and does not operate under the authority of the government. Therefore, cases in which a number of passengers or soldiers of a cargo or military vessel illegally take control of the vessel they are on are not considered piracy, but considering that the captured vessel is out of the control of the government of its flag, it is classified as private. And it is prone to play a role as a pirate ship. For example, in 1961, the crew of the Santamaria took control of it, but this was not considered piracy in itself. In this example, because

the Santamaria vessel was out of the control of its flag owner government, it was classified as private and prone to play the role of a pirate vessel.

Secondly, it is necessary that the actions of the attacking vessel are illegal and accompanied by violence, and ultimately end in the arrest, seizure, destruction or looting of the vessel, the persons present, or the property in another vessel (Ghadir and Setayeshpour, 2018: 38). Based on this, if a military vessel in the territorial waters of the government under its command seizes the vessels that entered this area without permission, it is not called piracy because the action of the military vessel was done in line with the defense of sovereign rights and legally. For example, the action of the Iranian Navy in 2017 to seize two American military vessels in the territorial waters of our country cannot be interpreted as piracy because the American military vessels had illegally entered the territorial waters of Iran. Also, if a government, with the aim of improving the level of international maritime security, assigns a number of its military vessels to patrol international waters and the said vessels, while performing their mission, try to seize vessels that are engaged in the smuggling business, it cannot be considered piracy because the actions of the vessels The military is not illegal and the legal basis of their actions can be justified from a large number of United Nations resolutions such as Resolution 2316, 9 November 2016, which was issued in order to encourage countries to prevent the expansion of smuggling trade in the seas (Javaheri and Hussein Poor, 2022: 101). Of course, it should be noted that even if the actions of vessels under the command of the government, such as military vessels, are not justified from a legal point of view, it cannot be said that piracy has been realized; Because we know that military vessels operate under the orders of the state that owns their flag and therefore are not subject to private description; While it was said that in order to fulfill the crime of piracy, it is necessary that the attacking vessel is classified as private. This is where the line between arbitrary detention and piracy becomes apparent.

Thirdly, it is necessary that the actions of the attacking vessel took place in international waters (Mahmoudi and Miri Balajourshari, 2021: 3). In other words, even if a private vessel attempts to seize a vessel or loot its cargo with illegal acts and with violence, but this issue is done in a place other than international waters,



such as internal waters, territorial waters, and even the exclusive economic zone. It cannot be considered as an example of piracy.

Fourthly, in addition to the fact that according to the third paragraph of Article 101 of the Convention on the Law of the Sea, aiding in the crime of piracy, such as facilitating or creating the desire to commit such an act, is considered as participation in piracy, it is necessary that the spiritual element of the perpetrators of this act in line with the goals be guided by someone (Kadkhodaei and Rahmaninejad, 2018: 194). In almost all the researches about piracy, there is a consensus on the issue that if the members of the attacking vessel take control of the victim's vessel in international waters with their illegal and violent actions, but their motivation is political or in line with advancing the goals of one or No matter how many governments there are, the said action will be interpreted as foreign piracy and an example of maritime terrorism. In this regard, the International Law Commission believes that it is not necessary for pirates to act with the intention of stealing property on other vessels, but they may pursue goals such as spreading hatred, holding grudges, showing power, and the like, which all the recent cases in It comes under personal goals. For example, in 1985, a number of Palestinian hostages disguised as passengers boarded the M.S Achille Lauro and subsequently took control of it, but this issue was never recognized as piracy because the hijackers were motivated by political issues.

According to the above, the question is raised that what will be included in cases such as the illegal seizure of a vessel by its occupants or an illegal and violent attack by the members of a private vessel that leads to the seizure of another vessel in an area other than international waters? Was? In many resolutions such as Resolution 2317, 10 November 2016, the Security Council uses the term Banditry against Vessels (Ghasemi and Setayeshpour, 2019: 223). This term is also seen in many regional agreements related to the fight against piracy. From the point of view of common people, the concept of piracy and banditry against vessels have a similar meaning, but according to Aimò, piracy against vessels is carried out in a range other than international waters and by the members of another vessel.

With all that has been said about the definition of the crime of piracy, many countries active in the field of seafaring and a number of organizations whose

activities are related to the seas in any way have provided multiple definitions of this crime according to the motives, goals and interests of the organization. For example, many local chambers of commerce or companies that are in charge of managing ports try to make the security of their coasts look good by presenting or accepting narrow definitions of piracy and in this way encourage foreign investors to use the facilities and Facilities available in the port. On the other hand, the International Maritime Bureau(. I.M.B), which operates under the International Chamber of Commerce, has defined piracy as "an attack on any type of vessel in any part of the waters with the intent of theft or any other criminal act." It can be seen that the scope of this definition is very wide compared to Article 101 of the Convention on the Law of the Sea, and based on it, piracy against vessels and possibly maritime terrorism can also be interpreted as examples of piracy. Such definitions of piracy encourage ship owners to insure their vessels by insurance companies that consider such definitions as the basis for compensation. The existence of multiple definitions of piracy is also effective in providing different statistics of the number of occurrences of this crime. For example, I.M.O based on the definition of piracy contained in Article 101 of the Convention on the Law of the Sea, the number of piracy registered in 2009 was 406, and the Piracy Reporting Center based on a definition not so different from the definition used by the International Maritime Bureau in the organizational mechanism. He believes in piracy, he reported 469 cases of piracy recorded this year.

As mentioned in the history section, at the time when countries were spending a lot of money on patrolling and fighting against theft and pirates, conditions were created so that once again, after the Iraq and Afghanistan wars, private military-security companies showed their ability to compete with the public sector display the military. Although the main topic of the current research is not dealing with private military-security companies, but in order to better understand future issues, we consider it necessary to provide a definition of these companies. Article 9 of the introduction of the Montreux document 2008 defines the private military-security company, which is also referred to as "P.M.S.C" in Persian literature, as a registered commercial company that provides military-security services, but Article 2 of the first part of the law Issuing the activity license of private military-security maritime companies approved by the Parliament of Malta is the only document that refers to a new type of these companies called "private military-security maritime company" and it is a legally registered company that aims to



support vessels against It has been interpreted as pirates or any other attack (Yazdan Nejat, 2014: 131). These companies perform their tasks by deploying groups of 3 to 10 former rangers trained in military bases in Western countries on the vessel of the contracting party or supporting that vessel by another vessel, and indicators such as good reputation, number of members, the company's military equipment, travel distance and time, and things like that have an effect on the wages of these companies.

## **2.2. Theoretical Foundations**

Some experts believe that increasing the security of the seas depends on reducing the activity of pirates and reducing the activity of pirates depends on resorting to force against them. The question that comes to mind in this section is what is the international legal basis for resorting to force against pirates? To put it better in international law, which provision is the legal element of resorting to force against pirates? In many resolutions of the Security Council, such as paragraph 15 of Resolution 1863, 16 January 2009, paragraphs 16 and 17 of Resolution 1814, 15 May 2008, and paragraph 6 of Resolution 1851, it is stated that governments can take all necessary measures in order to fight against pirates. Some Western politicians are trying to extend the scope of "all necessary and necessary measures" to the use of force. For example, David Miliband, the British Foreign Minister, announced in 2008 that in order to fight against pirates, a number of Security Council resolutions, including Resolution 1851, provided governments with an important tool called the use of force. Also, according to Article 105 of the Convention on the Law of the Sea, governments are obliged to pursue and arrest pirates in international waters (Salehi, 2020: 172). This provision is essentially a law, and the operations that are carried out with the purpose of implementing the text of the law are called law enforcement operations. Therefore, it can be said that the operation that is carried out in order to pursue and arrest pirates in international waters is a law enforcement operation, and Article 105 of the Convention on the Law of the Sea has implicitly given permission to governments to use force if the pursuit and arrest of pirates in international waters requires the use of force. They should not, because stopping a vessel carrying several armed pirates will most likely require the use of force. Therefore, it can be analyzed that the international

legal basis and the legal element of resorting to force against pirates can be justified from a large number of Security Council resolutions and Article 105 of the Convention on the Law of the Sea.

The question raised in this section is that resorting to force against pirates is absolute or conditional? It is safe to say that nowhere in international law is absolute and unconditional resort to force prescribed. However, in order to better examine this issue in the field of international law of the seas, it is necessary to briefly review the case of "Guinea v. Suriname". In 2003, the warship of the country of Suriname addressed to the oil tanker of the country of Guinea, which was stationed at the place of border-sea disputes between the two countries, and announced that it should leave the area, otherwise it will bear the consequences of disobeying this order. By filing a lawsuit against Suriname, Guinea requested the International Court of Law of the Seas (I.T.L.O.S) to determine whether the action of the warship of Suriname was in violation of paragraph 4 of Article 2 of the United Nations Charter. In 2007, citing a number of its previous decisions and the decision of the International Court of Justice (. I.C.J) in the "Nicaragua" case, the Court declared: "Like other areas of international law, it is necessary to avoid the use of force in the seas as much as possible, but if the use of force It is inevitable, it must be accompanied by the implementation of the law and the observance of the basic principles governing the use of force" (Taghizadeh, 2013: 126). The generalization of this part of the judgment of the court to the issue of fighting against pirates confirms the conclusion that in dealing with pirates, it is necessary to avoid resorting to force as much as possible, unless the resort to force against them is unavoidable, in line with law enforcement and with Compliance with the basic principles governing the use of force must be accompanied (Evans and Galani, 2020: 23).

Now it's time to ask the question, what is the meaning of observing the basic principles governing the use of force against pirates? We know that international law does not recognize the use of force except under the concept of legitimate defense and compliance with necessity and proportionality are among the basic principles governing the concept of legitimate defense (Mirza and Sajid, 2019: 2). Therefore, it can be said that in resorting to force against pirates, it is necessary to



observe the principle of necessity and proportionality. In this regard, some jurists such as Tullio Treves stated that resorting to force against pirates is not allowed except in the legitimate defense of their own vessels or the vessels of other countries, and as long as pirates do not resort to weapons, governments can only use non-violent methods to arrest them; But if the pirates take up arms, governments are allowed to resort to coercive measures against them. Treves compares the fight against pirates to police operations and adds that the principle of necessity and proportionality should be taken into account when resorting to force against them (Treves, 2009: 404).

Another theoretical point of view expressed regarding the fight against pirates is to comply with international humanitarian law regulations towards them. We know that the provisions of international humanitarian law outline the framework of laws governing armed conflicts. Some theorists stated that comparing the situation of conflict with pirates to an armed conflict is questionable, and for this reason, governments are exempt from complying with international humanitarian law regulations when conflicting with pirates. In contrast to this group, some other theoreticians such as Ryan Goodman state that it may not be possible to interpret a conflict with pirates as an armed conflict, but this does not mean that the provisions of international humanitarian law, such as the provisions of the Geneva Conventions, cannot be extended to pirates. In line with the confirmation of Goodman's theory, it should be said that it is difficult to believe that governments are exempted from complying with international humanitarian law regulations in the capacity of armed struggle against pirates (Wallner and Kokoszkiewicz, 2019: 25-27), because first we know that resorting to force against pirates, it should be accompanied by the observance of the principle of necessity and proportionality, which is closely related to the provisions of international humanitarian law. Secondly, in many situations, pirates are among the civilian population or among their hostages, which requires the observance of the "principle of separation" which is considered one of the most basic principles of international humanitarian law. Thirdly, many international treaties, such as Article 7 of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988, have recognized the rights of the piracy suspects, such as the right to a fair trial, from the prosecution stage to the end of the trial. Fourthly, according to Article 5

of the Third Geneva Convention, ambiguity in the nature of pirates and the nature of the fight against them happens to cause the expansion of the provisions of international humanitarian law and not the reasons for its deprivation. Emphasizing the recent regulation that states: "as long as the doubts about the nature of the arrested persons have not been resolved, the provisions of this convention shall apply to them"; We conclude that due to the ambiguity in the nature of the fight against pirates, they cannot be excluded from the inclusion of the provisions of the Geneva Conventions as regulations for the entire international community (Yaghoubi and Sharifi Tarazkahi, 2022: 246).

With all that we have said, some theoreticians believe that the Convention on the High Seas, the Convention on the Law of the Sea, and the resolutions of the Security Council do not have a suitable executive system to fight the crime of piracy and its perpetrators. To put it better, this group believes that the above documents call on countries to fight against pirates, but they do not specify if a country, despite having the necessary power, did not want to play an individual or group role in this regard, or the ruling legal system resorting to What will be the consequences of not using force against pirates as an armed struggle against them (McMahon, 2017: 36). The answer to this question lies in Article 14 of the High Seas Convention. The recent regulation states that member states of this convention must take all necessary measures to fight against pirates, and if a state refuses to do this duty, it will neglect its international duties and bear international responsibility for its actions.

The role of private military-security companies in the fight against pirates faces two basic challenges. First, in line with the implementation of their obligations as a member of the international community, governments spend a significant part of their budget and military power to fight against theft and pirates in order to provide a high goal of providing security in the seas, but the philosophy of private military companies - Security, which is supposed to provide security for receiving money, is completely contrary to the recent goal of governments. In other words, private military-security companies not only benefit from the activities of pirates, but also interpret the provision of security in the seas as the loss of one of their sources of income. Secondly, according to the provisions of the Montero document, the use



of the services of a private military-security company belongs only to the government that either takes the initiative to register the company or issues an activity license for it. According to paragraph A of the first part of the Montreux document and Article 10 of the "Draft Convention on the Supervision and Control of Private Military-Security Companies of the United Nations Human Rights Council", all countries that intend to register or grant operating licenses to private military-security companies are obliged to carry out the necessary supervision on the military methods and weapons used by the members of these companies and arrange the necessary requirements for them to comply with all the principles of international humanitarian law. According to the recent articles, the responsibility resulting from not paying attention to these matters by private military-security companies is primarily directed at the respective government of that company and also the government that granted the license to that company. Although it is possible to provide sufficient requirements in terms of mechanisms for private military-security companies to adhere to international humanitarian law regulations, it is obvious that many countries are willing to hire a possibly foreign military unit whose philosophy is to provide security in exchange for receiving money. They may not be. Therefore, the use of private military-security companies in the fight against pirates is not an option that all countries can easily use. On the other hand, it seems unlikely that a country will easily issue a license to anchor a cargo vessel carrying an armed group whose international legal nature is widely disputed.

### **3. Solutions to Improve the Security of Cargo Vessels against Piracy Operations**

It is clear that reducing the amount of pirate activity requires international determination (Kareem, 2015: 2). Improving the security of cargo vessels can increase the number of failed pirate theft operations. The increase in failed theft operations will discourage pirates in reducing their motivation to continue operating in this field, but how can the security of cargo vessels be improved against theft operations? To answer this question, the authors carefully analyzed a number of pirate theft operations and paid attention to the common methods among them, and presented five strategies to improve the security of cargo vessels against

theft operations, which require advanced technology and high financial support for their implementation.

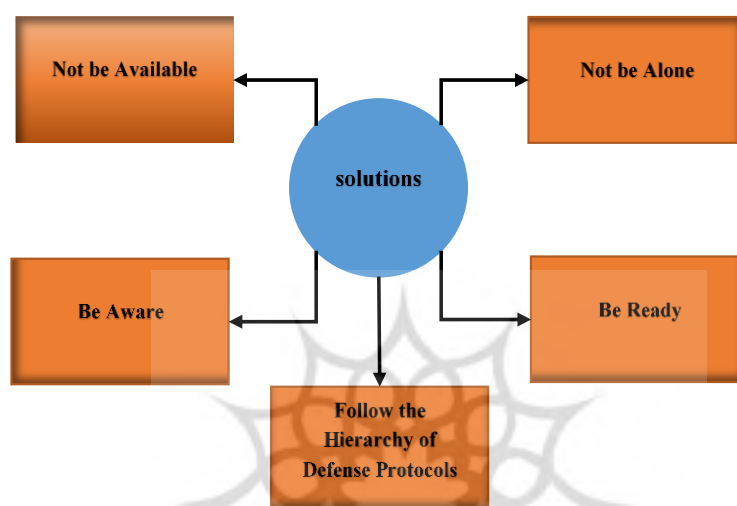


Figure 1: Solutions to Improve the Security of Cargo Vessels against piracy Operations

### **1.3. Avoiding Solitary Movement and Continuous Transmission of Position**

In all parts of the world's waters, many military vessels are busy patrolling or carrying out assigned missions. It is better for cargo ships to continue on their way with the international standard distance of 500 meters from military vessels, so that if they are attacked by pirates, it would be appropriate to carry out rescue and rescue operations or Salvage Operations for military vessels, but we know that military vessels are not always available or possible have a destination different from the destination of the floating cargo. In such a situation, it is better for cargo vessels to move in groups. It may be thought that the movement of two or more cargo ships next to each other is considered a tempting target for pirates, but it should not be overlooked that the sight of such a convoy sends the message to the pirates that it is impossible for the ships in front of them without taking the necessary precautions move to defend themselves. It is also necessary for cargo vessels to continuously provide their position to regulatory agencies by keeping the Global Positioning System (G.P.S) and Automatic Identification System (A.I.S) on; Because in the eyes of those who are busy monitoring the movement of vessels, the sudden change of the course of a vessel and the shutdown of the



above systems in the first place has no meaning other than the theft of that vessel. With the help of the above systems, it is possible to search for the sacrificed vessels along their last orientation (Perkovic and Others, 2016: 151).

### **2.3. Moving from Safe and Inaccessible Routes**

It is necessary for the commander of the vessel to pay attention to the situations where piracy has been committed recently and to gain the necessary knowledge of the areas that are more prone to this type of theft than other areas and subsequently avoid entering avoid those routes, but changing the route can sometimes lead to problems such as spoilage and loss of cargo. In such a situation, there may be no choice but to enter the routes close to the destination but unsafe. It is better for the captain of a cargo vessel to know that in favorable weather conditions, a lone cargo vessel passing through calm waters at low speed is the most tempting target for pirates. The way pirates work is usually that they target themselves with fast boats to the side of the cargo vessel and take control of it by climbing the hull of the vessel using a rope (Poorbafrani and et.al, 2017: 29). Since the use of speed boats is not suitable for entering deep waters and the fuel storage tank of this type of vessels is not designed to be too far from the shore, it is better than if the captain of the cargo vessel is forced to cross unsafe routes at maximum speed. In deep waters away from the shore, move towards the destination and use night vision cameras instead of keeping unnecessary lights on at night.

### **3.3. Avoiding Surprise and Maintaining Readiness to Deal with Pirates**

It is necessary to increase the number of anti-piracy lookout posts and to change the lookouts regularly and adequately supervise their patrols. It is also necessary that when the vessel passes through the routes prone to pirate theft operations, the watchers should perform all their duties with vigilance and inform others as soon as they see the slightest threat or suspicious movement in the sea, so that the situation is immediately communicated to the International Chamber of Shipping. Even when a cargo ship has reached its destination and docked at the port, it is necessary for the watchmen to take care of the vessel because skilled pirates regularly attack the decks of cargo ships in the port cities of Karachi in India, Chittagong in Bangladesh, Wang Tao in Vietnam, Lagos in Nigeria and Cotonou in Benin, they took control of the vessel after it entered international waters. The

use of cages and electromagnetic fields or sound spectrum emission devices are effective methods to keep thieves away from the body of cargo vessels, but these require advanced technology and high financial support. Therefore, installing a trench, using barbed wire around the vessel, increasing the obstacles on the way to the control room, equipping the vessel with CCTV and radar, having water hoses and high pressure floor and water pressure balls available and ready to use, preparing the vessel for execution 180 and 360 degree rotations to create artificial waves, increase the members of the physical protection group and improve their ability to fight one-on-one, and finally, the design of secret and impenetrable rooms to hide the people who play an essential role in guiding the vessel are among the things which can be considered.

#### **4.3. Knowledge of Pirates' Equipment and Abilities**

Pirates usually use Kalashnikovs and RPGs to carry out their robbery operations because access to these types of weapons is very easy for pirates and there is no need to learn specialized training to use them, but the power of these weapons has been exaggerated. (Moradi, 2011: 58). Although Kalashnikovs and RPGs make a great noise when using them, it is necessary for cargo ship crews to know that the weapons that pirates carry are designed for close combat and have little accuracy and penetration power. In military barracks, after months of training with this type of weapon, soldiers can shoot fixed targets at a distance of 100 to 300 meters, but pirates, apart from being deprived of basic training on how to use military weapons, face challenges such as shooting from a moving target while moving on choppy waters, so many of their shots are practically blind shots. Therefore, it is better for the commander of a cargo ship when facing pirates to direct the ship to a safe place or to the nearest military vessel with the maximum possible speed and to know that every sound of a bullet that he hears does not necessarily mean that it will hit the body of the vessel under his command.

#### **5.3. Complying with the Hierarchy in the Implementation of Defense Protocols**



We know that normally cargo vessels are not allowed to carry weapons. However, in cases where the value of the cargo is very high or the cargo vessels have to pass through routes prone to theft operations by pirates, there is a possibility of issuing a license to carry weapons and enter the ports of the destination government for the cargo vessel (Finardi and Danssaert, 2017: 31-37). If the cargo ship is carrying military weapons or has a license to carry weapons, it is recommended to resort to weapons as the last option in case of encountering pirates. Although a sunken cargo ship does not heal the pain of pirates, but if the members of the physical protection group take up arms and kill several of them in the first place when they encounter pirates, and subsequently prove to the pirates that they cannot control the ship. Once they get hold of the target, it is not unlikely that they will prefer revenge over the main target of their attack and instead of looting the vessel, they will try to sink it. In order to prevent pirates from attacking, it is better to place the military weapons of cargo ships in parts that are visible to pirates. It is expected that if the pirates see that the floating military weapons are a more advanced target than their military weapons, they will avoid the attack take over and return the fire of the pirates in such a way that the pirates use the remaining opportunity to escape and do not have the opportunity to attack again. It is obvious that the members of the physical protection group are committed to complying with the aforementioned principles in using weapons against pirates and cannot use any type of weapons or any war tactics (Seify and Lashani, 2022: 57). In the direction of better military defense than the fleet, it is necessary for the commander to have sufficient familiarity with the indicators for detecting the imminent military threat (Ebrahimzadeh and Sirghani, 2022: 90).

### **Conclusion**

It cannot be assumed that states are allowed to resort to illegal measures outside the framework of international humanitarian law to combat illegal acts of piracy. Therefore, it is necessary to observe the principle of necessity, proportionality and all provisions of international humanitarian law in the position of fighting against pirates, but it is better to resort to force against pirates to solve the challenge of the phenomenon of piracy. Although we

believe that eradicating the challenge of piracy seems like an idealistic idea, we are sure that by adopting a coherent plan, this great international challenge can be curbed. Therefore, considering all that was given in the research, we present our proposed program, which consists of two operational phases.

Therefore, according to all that was presented in the research, the proposed program, which includes two operational stages, is presented as follows:

In the first stage, the incentives to turn to piracy should be reduced, which should be possible by creating job opportunities in the fragmented country of Somalia, maximum avoidance of paying ransom to pirates, and building a culture to avoid joining active groups in the field of piracy will be acceptable. In parallel with these measures, existing legal deficiencies in the field of combating piracy should be identified and eliminated. Among the legal problems in the fight against pirates, we can mention Article 111 of the Convention on the Law of the Sea, the content of which has turned the territorial seas of the Neighbor across the border country or country into a safe haven for these pirates. Fixing this defect can be pursued by identifying the "right of reverse prosecution."

In the second stage, the way to establish security in the seas should be followed more intelligently. Considering the high cost of maritime patrol by the government-military sector, it is not acceptable to turn to the employment of the private military-security sector with all the aforementioned challenges. Therefore, it is necessary to provide a part of the military budget of the countries that use their military power to fight against pirates, and to provide the financial participation of countries that do not have a naval fleet, so that maritime patrols in areas where the possibility of committing piracy is very little are abandoned and the necessary training to be given to the members of the cargo ships, instructions on how to improve the security of their ships against pirates. In order to implement this issue, five solutions were



presented, which, unlike the use of private military-security companies, can be used by all countries and can face the phenomenon of piracy with a fundamental challenge:

.. Appropriate use of the said materials by holding scientific workshops and providing theoretical and practical training to sailors,

2. Examining recorded videos of pirates' actions,

3. Using the experience of ship owners and those who have been able to thwart pirate operations,

4. Finding suitable solutions for how to increase safety and security,

5. The possibility of using simulated workshops and placing the vessel in a position that is going to be attacked by pirates.

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